

REMARKS

Upon entry of the amendments herein, claims 32-47 remain pending in the application. Claims 37, 42 and 44 have been amended herein.

On April 7, 2003, the Examiner called to discuss the case in the wake of Applicants' submission after final rejection. The Examiner indicated that claims 42-47, submitted after final rejection, would be entered but that some issues remained to be resolved prior to allowance of the application with all pending claims. During the course of the April 7th discussion and follow-up discussions on April 24th, May 1st and May 13th, all of the issues but one were resolved; it was acknowledged by the Examiner that no arguments or amendments need be submitted by way of follow-up to the telephone resolution of issues.

There remained, however, one issue with respect to the scope of claims 37, 42 and 44. In view of the Examiner's expressed concerns, these claims have been amended to make it absolutely clear that the recited promoter elements constituting functionally equivalent modified forms of SED ID NOS: 1 and 2 are themselves at least 95% homologous to said sequences. The Examiner also acknowledged, though, that the instant disclosure (see, e.g., Fig. 4) provides adequate support for the recitation

of active fragments of SEQ ID NOS: 1 and 2 without the limitation of % homology language. The claims as amended reflect this distinction between the two classes of variants recited.

It is the understanding of Applicants' agents through their discussions with the Examiner that the amendments herein to the claims remove the remaining impediment to allowance of the application. Accordingly, it is respectfully requested that the amendments be entered and that the application, with pending claims 32-47, be allowed. Should any other matters require attention prior to allowance of the application, it is requested that the Examiner contact the undersigned.

The Commissioner is hereby authorized to charge any fees
which may be due in connection with this communication to
Deposit Account No. 23-1703.

Dated: May 14, 2003

Respectfully submitted,



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